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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

G. L.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

F057324

(Super. Ct. Nos. 08CEJ300124-1 and  
08CEJ300124-2)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jane A. Cardoza, Judge.

Kenneth K. Taniguchi, Public Defender, and Julie Ann Bowler, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Kevin Briggs, Interim County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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\*Before Vartabedian, Acting P.J., Cornell, J., and Kane, J.

Petitioner (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from respondent court's order issued at a contested 6-month review hearing terminating her reunification services and setting a Welfare and Institutions Code section 366.26 hearing as to her daughters, N.V. and N.L. We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

In May 2008, then two-year-old N.V. and nine-month-old N.L. were removed from petitioner's custody by the social services department (department) after petitioner, then pregnant, and her boyfriend left them locked in a car for approximately an hour in the parking lot of a gambling casino. The children and their car seats were soaked in urine and sweat. The children's skin was reddish in color and they were dirty and hungry. N.V. had a bump on her lower spine, a healing cut on her forehead, many small scars and bruises on her legs, and a severe diaper rash. Petitioner tested positive for methamphetamine and marijuana. She was arrested and cited for child endangerment but not incarcerated because of her pregnancy. The children were placed with their maternal aunt.

In July 2008, the juvenile court exercised dependency jurisdiction over the children and ordered petitioner to participate in parenting and anger management classes, substance abuse, mental health and domestic violence evaluations and submit to random drug testing. The court set the six-month review hearing for December 2008.

Meanwhile, in July 2008, petitioner entered a residential drug treatment program but was discharged in September 2008 for using methamphetamine, cocaine and oxycodone. The same day petitioner was discharged; she entered a second drug treatment program. However, in early October, she was discharged for using methamphetamine. In early November, petitioner was admitted to a third drug treatment program but was discharged six days later because there was concern she had tuberculosis (TB) and she did not provide a medical clearance to allow her to continue in treatment.

The six-month review hearing, originally scheduled in December 2008, was continued and conducted as a contested hearing spanning several hearings beginning in January 2009 and concluding in March 2009. Meanwhile, in late January 2009, petitioner entered a fourth residential drug treatment program, which she was scheduled to complete in April 2009.

In its status report for the six-month review hearing, the department informed the juvenile court that petitioner regularly visited the children under supervision and was loving and affectionate with them but she did not otherwise comply with her court-ordered services. In addition, she was in county jail for violating her probation and awaiting charges for willful cruelty to a child with the possibility of death and endangerment, possession of a controlled substance and destroying evidence. Under the circumstances, the department recommended the court terminate petitioner's reunification services and establish a permanent plan for the children.

At the six-month review hearing, petitioner testified she left the third drug treatment program because she could not get a medical clearance for TB. Consequently, she was remanded to county jail because she was no longer in a program. She attempted to get back into a program by contacting her social worker and probation officer. She also wrote letters to drug facilities and asked for the court's assistance. She remained in custody for approximately a month. A staff member from the fourth drug treatment program testified she interviewed petitioner in jail and transferred her from jail to the treatment facility. Petitioner testified on cross-examination she was placed in the drug treatment program by probation.

The social worker testified petitioner came to her office in mid-November 2008 and told her she tested positive for TB and could not return to treatment. Petitioner also told the social worker she informed someone at the third drug treatment center about her circumstances but the social worker found out she had not when the social worker contacted petitioner's counselor. Petitioner subsequently telephoned the social worker

and stated she did not have a telephone and, therefore, had no way to contact anyone at the treatment center. Petitioner also stated she worried she was becoming very sick with TB. Concerned, the social worker had one of the senior public health nurses in the department contact the medical clinic where petitioner was diagnosed. The nurse reported back that petitioner's x-ray was normal and she did not have TB. In early December 2008, petitioner contacted the social worker to tell her she was incarcerated. Asked if she made efforts to have petitioner transferred directly from jail to a treatment facility, the social worker testified she did not believe that was possible.

At the conclusion of the hearing, the juvenile court found the department provided petitioner reasonable services but that her progress was "none to minimal." The court further found, by clear and convincing evidence, petitioner failed to participate regularly in the court-ordered treatment plan and that it was in the children's best interests to set a section 366.26 hearing. This petition ensued.

## **DISCUSSION**

Generally, reunification services are limited to six months in cases such as this where the child was under the age of three years when removed from parental custody. (§ 361.5, subd. (a)(1)(B).) The purpose of the six-month limitation on services is to provide the juvenile court greater flexibility in meeting the needs of young children where the "[parent has] made little or no progress in [his or her service plan] and the prognosis for overcoming the problems leading to the child's dependency is bleak." (*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 611, 612.) Consequently, the juvenile court may schedule a selection and implementation hearing under section 366.26 on the six-month review date if it finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in reunification services. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability that the child may be returned to parental custody within six months or that reasonable

services were not provided, the court must continue the case to the 12-month review hearing. (*Ibid.*)

In order to find a substantial probability of return, the court must find the parent regularly visited the child, made significant progress in resolving the problem prompting removal of the child, and demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection and well-being. (§ 366.21, subd. (g)(1).)

We review the juvenile court's order terminating reunification services to determine if it is supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) Substantial evidence is "reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged...." (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.)

Petitioner argues her diagnosis of TB rendered her a special needs case, which the department failed to accommodate by helping her transfer from jail to a drug treatment program, and which the juvenile court failed to consider in assessing her progress. Consequently, she claims the court erred in finding that she was provided reasonable services, and that she failed to regularly participate in her court-ordered services. Additionally, she contends, the court erred in finding there was not a substantial probability the children could be returned to her custody and in refusing to continue services. We disagree.

The problem necessitating the removal of petitioner's children was her drug abuse. Consequently, petitioner was ordered into residential drug treatment. In the course of four months, from July to November 2008, petitioner was admitted to and discharged from three programs, the first two times for using drugs at the facility and the third time for failing to provide a medical clearance for a medical condition, it turns out, she does not have. According to undisputed evidence, the social worker urged petitioner to contact the treatment facility for assistance. Instead, petitioner remained, by her own

choice, out of treatment and was incarcerated. The fact that petitioner had to arrange her own treatment on the fourth try after months of assistance does not support a conclusion she was not provided reasonable services.

Further, with respect to whether petitioner regularly participated in her court-ordered services, the appellate record speaks for itself. Petitioner was given multiple chances to participate in meaningful treatment for her drug use but she continued to use. In addition, contrary to her assertion, she did not “fend for herself to get enrolled in a program.” She may have made inquiries, but it was the probation department that placed her in treatment. Nevertheless, any efforts petitioner may have made on her own behalf do not translate into regular participation given her many prior months of treatment failure.

Finally, the fact that petitioner was scheduled to complete substance abuse treatment in April only means that her treatment would be completed within six months, it does not mean that there was a substantial probability the children could be returned to her custody. On the contrary, given petitioner’s history of drug use and treatment failure, there was no reason to believe she could demonstrate to the court her ability to meet the objectives of her case plan and provide a safe home for her children by the 12-month review hearing. In light of the foregoing, we conclude there is no error.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.